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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CLARENCE DEMETRIUS TATE,)	No. CV 11-06048-JGB (VBK)
)	
Petitioner,)	ORDER ACCEPTING FINDINGS AND
)	RECOMMENDATIONS OF UNITED STATES
v.)	MAGISTRATE JUDGE
)	
ROBERT TRIMBLE,)	
)	
Respondent.)	
_____)	

Pursuant to 28 U.S.C. §636, the Court has reviewed the First Amended Petition for Writ of Habeas Corpus ("First Amended Petition"), the records and files herein, and the Final Report and Recommendation of the United States Magistrate Judge ("Final Report"). Further, the Court has engaged in de novo review of those portions of the Final Report to which Petitioner has objected.

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1 **IT IS ORDERED** that: (1) the Court accepts the Findings and
 2 Recommendations of the Magistrate Judge, and (2) the Court declines to
 3 issue a Certificate of Appealability ("COA").¹



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 6 DATED: 7/18/13

JESUS G. BERNAL
 UNITED STATES DISTRICT JUDGE

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 15 ¹ Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability
 16 may issue "only if the applicant has made a substantial showing of the
 17 denial of a constitutional right." Here, the Court has accepted the
 18 Magistrate Judge's finding and conclusion that the Petition is a
 19 second or successive petition. Thus, the Court's determination of
 20 whether a Certificate of Appealability should issue here is governed
 21 by the Supreme Court's decision in Slack v. McDaniel, 529 U.S. 473,
 22 120 S. Ct. 1595 (2000), where the Supreme Court held that, "[w]hen the
 23 district court denies a habeas petition on procedural grounds without
 24 reaching the prisoner's underlying constitutional claim, a COA should
 25 issue when the prisoner shows, at least, that jurists of reason would
 26 find it debatable whether the petition states a valid claim of the
 27 denial of a constitutional right and that jurists of reason would find
 28 it debatable whether the district court was correct in its procedural
 ruling." 529 U.S. at 484. As the Supreme Court further explained:

"Section 2253 mandates that both showings be made before the
 court of appeals may entertain the appeal. Each component
 of the § 2253(c) showing is part of a threshold inquiry, and
 a court may find that it can dispose of the application in
 a fair and prompt manner if it proceeds first to resolve the
 issue whose answer is more apparent from the record and
 arguments." Id. at 485.

Here, the Court finds that Petitioner has failed to make the
 requisite showing that "jurists of reason would find it debatable
 whether the district court was correct in its procedural ruling."